



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMno12061298
[REDACTED]

[REDACTED],
Complainant,

v.

TEQUILA RESTAURANTE,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice has occurred. 910 IAC 1-3-2(b).

On June 20, 2012, [REDACTED] ("Complainant") filed a Complaint with the Commission against Tequila Restaurante ("Respondent") charging discrimination on the basis of national origin and sex, specifically, pregnancy [REDACTED] and the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was terminated based on her national origin and/or pregnancy. In order to prevail, Complainant must show that: (1) she is a member of a protected class; (2) she suffered an adverse employment action; (3) she was meeting Respondent's legitimate business expectations; and (4) a nexus exists between the adverse employment action and Complainant's pregnancy and/or national origin.

It is evident that Complainant falls within a protected class by virtue of her national origin and her pregnancy. Further, it is undisputed that she suffered an adverse action when she was terminated on May 18, 2012. Thus, the only remaining questions are whether Complainant was meeting Respondent's expectations or, if not, whether there exists a causal connection between the adverse employment action and her protected status.



The evidence shows that Complainant was not meeting Respondent's legitimate business expectations. Complainant had been disciplined for arguing with a co-worker and marrying liquor bottles. However, the American female employee Complainant identified as being treated more favorably is not similarly-situated since she was disciplined for a customer complaint. As such, the available evidence shows that probable cause does not exist to believe that an unlawful discriminatory practice occurred based upon Complainant's national origin.

Moreover, while Complainant alleges that she informed Respondent of her pregnancy on May 16, 2012, Respondent stated that he was unaware of it. However, during an interview with Respondent's owner ([REDACTED]), he admitted that his employees were aware of the pregnancy, suggesting that Respondent should have been aware of Complainant's pregnancy. Further, the record shows that Complainant was terminated on May 18, 2012 for a conflict of interest, two days after Respondent should have been aware of Complainant's pregnancy. The available evidence suggests that Respondent's rationale for terminating Complainant is unworthy of credence and may amount to pretext for unlawful discrimination based on the basis of pregnancy. Therefore, probable cause exists to believe that an unlawful discriminatory practice may have occurred due to Complainant's pregnancy.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

March 5, 2013

Date

Akia Haynes

Akia A. Haynes, Esq.,

Deputy Director

Indiana Civil Rights Commission